



State Bar of Michigan – Children's Law Section (SBM-CLS)

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June 12, 2013

TO: House Families, Children, and Seniors Committee

RE: House Bill 4589

To Whom It May Concern:

The State Bar of Michigan-Children's Law Section has been made aware that the Families, Children, and Seniors Committee of the House has proposed passage of House Bill 4589 (HB 4589). This bill addresses adoptive placements correlating with termination of parental rights as well as change of unsuitable foster placements. The Children's Law Section requests that the House Families, Children, and Seniors Committee find this bill unnecessary for the reasons found below.

Pursuant to MCL 712A.19b(1), if all parental rights to a child are terminated, the child will be placed in the permanent custody of the court. If the court terminates parental rights, the court must order that additional efforts for the reunification of the child with the respondent parent must not be made pursuant to MCL 712A.19b(5). The court may then commit the child to the Michigan Children's Institute (MCI) for adoptive planning, supervision, care, and placement pursuant to MCL 400.203(1)(a).

Pursuant to MCL 710.41(2), once a court enters an order terminating parental rights, it may place a child in an adoptive home before the time for a rehearing or appeal of the termination order has expired. Further, the court must not grant an adoption petition while an appeal is pending with the Court of Appeals or the Supreme Court. *In re JK*, 468 Mich 202, 219 (2003); MCL 710.56(2). Through post termination review hearings, the court monitors the progress of the parent's appeal and ensures that an adoption does not take place until the parent's right to appellate review has been exhausted. *In re JK*, supra at 210. Pursuant to various statutes and court rules, a child is not to be placed in a formal adoptive placement until parental rights are legally terminated.

What also should be noted is that pursuant to MCL 712A.19(12), "reasonable efforts to finalize an alternative permanency plan may be made concurrently with reasonable efforts to reunify the child with the family." DHS policy requires that workers develop a dual permanency plan (often referred to as concurrent planning) for a child as early in the case as possible (please see FOM 722-7). Therefore, the agency and the court evaluate two plans for each child protective case: the primary plan of reunification and the secondary plan of adoption, juvenile guardianship, etc. However, the child is not placed in a formal adoptive placement until parental rights have been

Mission: The Children's Law Section works to strengthen the delivery and enhance the quality of legal services for children through continued education and trainings, improve the court systems and agencies that serve children's needs through representation of parents and children, and advance the rights of children through changing legislation and policy. We are involved in the court system to represent juvenile offenders and the victims of abuse and neglect and we work to improve the lives of children and families ensuring that they all receive justice.

terminated as discussed above despite a “back up plan” being developed by the agency and the court.

The agency is also required to identify, locate, notify, and consult with all relatives to determine placement of a child with a fit and appropriate relative. This placement must be given special consideration and preference for foster care purposes as well as adoption purposes despite the child being placed in a licensed unrelated foster home for any amount of time. However, the placement must be in the best interests of the child. This search of fit and willing relatives is a continuous process through the entirety of the case. Some relatives do not come forward for placement of the child until the termination of parental rights which creates a competing party case for adoption between the relative placement and the licensed unrelated foster home who has expressed interest in adoption. The court or the MCI Superintendent must then decide which placement would be in the child’s best interests for adoption purposes.

In regards to a change in foster care placement, whether it be emergency or non-emergency, MCL 712A.13(b) outlines the circumstances in which a change in placement exists, notice requirements, what procedures must be followed, and the ability to appeal the placement decision. This statute further states that once a child is removed from a foster care placement, that child may not be returned without a court order or the MCI Superintendent’s approval. Therefore, the child cannot be adopted by the placement found to be inappropriate unless there is a review by the Court or the MCI Superintendent.

Therefore, before proposal and passage of HB 4589, we respectfully request that the Families, Children, and Seniors Committee take into consideration the information provided above and find that the bill is unnecessary based on the current statutes and court rules that already address the issues brought forth in HB 4589. Thank you for your time and consideration. Should you have any questions or concerns, please do not hesitate to contact us.

Sincerely,

Robin Eagleson

Robin Eagleson on behalf of the Children’s Law Section
Chair of the State Bar of Michigan-Children’s Law Section